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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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08/536,750 09/29/95 DRIZEN A 22890

15M2/0709

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EXAMINER

HULINA, A

ART UNIT

PAPER NUMBER

1501

9

DATE MAILED: 07/09/97

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

### OFFICE ACTION SUMMARY

Responsive to communication(s) filed on April 17, 1997

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 2 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

Claim(s) 1,3-5, 7-14, 15-51 is/are pending in the application.

Of the above, claim(s) 15-51 is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 1,3-5, 7-14 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims 1,3-5, 7-51 are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- Notice of Reference Cited, PTO-892
- Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- Interview Summary, PTO-413
- Notice of Draftsperson's Patent Drawing Review, PTO-948
- Notice of Informal Patent Application, PTO-152

- SEE OFFICE ACTION ON THE FOLLOWING PAGES -

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1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1,3-5,7-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sander et al.

3. Claims 1,3-5,7-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leschiner et al.

The claims are rejected for the reasons of record in paper no. 7.

4. Applicant's arguments filed 4/17/97 have been fully considered but they are not persuasive. Applicant argues that his inventive subject matter does not require any biocompatible particles formed from methacrylates dispersed within its matrix. While this may be true the claims as presently written do not exclude such particles. The language "consisting essentially of" is not limiting to a composition claim wherein the language "comprising" is present. Applicant also argues that hyaluronic acid salts are not a part of the matrix. This is not true since claim 37 recites that they are present. Applicant states that hydroxyethyl cellulose and hydroxypropyl cellulose are essential to Applicants' invention. Claims 35 does not require the presence of either if sodium carboxymethylcellulose (Na CMC) is present and Sander et al disclose Na CMC. Applicant has not responded to the assertion that it would have been obvious

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to one having ordinary skill in the art to substitute one cellulose ether for another in view of a teaching of equivalence.

Applicant argues that Leshchiner et al. disclose a two phase mixture whereas the instant claims are drawn to a single phase mixture. The claims do not recite that the mixture is single phase and in fact the polymer matrix can be suspended in the liquid medium which would be a two phase mixture. .

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for response to this final action is set to expire THREE MONTHS from the date of this action. In the event a first response is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for response expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy Hulina whose telephone number is (703) 308-2974.

  
Amy Hulina  
Primary Examiner  
Group 1500